



[4910-EX-P]

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0239]

Hours of Service of Drivers: Application for Exemption; Small Business in Transportation Coalition

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Application for exemption; final determination.

SUMMARY: FMCSA announces its decision to deny the Small Business in Transportation Coalition's (SBTC) request for reconsideration of its application for exemption from the electronic logging device (ELD) rule that was denied by the Agency on July 17, 2019. SBTC has resubmitted its application for exemption from the ELD requirements for all motor carriers with fewer than 50 employees, including, but not limited to, one-person private and for-hire owner-operators of commercial motor vehicles used in interstate commerce. SBTC believes that the exemption would not have any adverse impacts on operational safety as motor carriers and drivers would remain subject to the hours-of-service (HOS) regulations, as well as the requirements to maintain paper records of duty status (RODs). FMCSA has analyzed SBTC's petition for reconsideration and the public comments received and has determined that neither the applicant nor the commenters provided information that would change the Agency's previous decision to deny the exemption.

FOR FURTHER INFORMATION CONTACT: Ms. La Tonya Mimms, Chief,
FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle

Safety Standards; Telephone: (202) 366-4325; E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

When the Agency denied a request for an exemption, the applicant may be allowed to resubmit the application, if the applicant can reasonably address the basis for denial. 49 U.S.C. 31315(b)(3).

II. Background

On December 16, 2015, FMCSA published the Electronic Logging Devices and Hours of Service Supporting Documents final rule (80 FR 78292). The ELD rule applies to most motor carriers and drivers who are required to keep RODS. The compliance date for the ELD requirement was December 18, 2017.

On June 5, 2018, FMCSA published SBTC's application for exemption and requested public comment (83 FR 26140). SBTC reports it is a non-profit trade organization with more than 8,000 members. SBTC states that it "represents, promotes, and protects the interest of small businesses in the transportation industry. Through the exemption application, SBTC sought relief from the ELD requirements for small private, common and contract motor carriers with fewer than 50 employees. SBTC argued:

"[T]he ELD rule is not a "safety regulation" per se as the FMCSA has concluded. Rather it is a mechanism intended to enforce a safety regulation by regulating the manner in which a driver records and communicates his compliance. That is, it is merely a tool to determine compliance with an existing rule that regulates over-the-road drivers' driving and on duty time, namely the actual safety regulation: the [hours-of- service] regulations codified at 49 CFR 395.3 and 395.5. However, the ELD rule is not a safety regulation itself. Therefore, it is our position that this rule does **not** itself impact safety, and that the level of safety will not change

based on whether or not our exemption application is approved. That would require a change to the [hours-of-service rules].”

On July 9, 2018, FMCSA extended the public comment period at the request of the SBTC (83 FR 31836). The Agency received more than 1,900 comments to the docket [Docket No. FMCSA-2018-0180]. Most of the comments favored granting the exemption. On July 17, 2019, the Agency published notice of its decision to deny SBTC’s application for exemption (84 FR 34250) and listed the following reasons for the denial:

- Failing to provide the name of the individual or motor carrier that would be responsible for the use or operation of commercial motor vehicles (CMVs) under the exemption [49 CFR 381.310(b)(2)];
- Failing to provide an estimate of the total number of drivers and CMVs that would be operated under the terms and conditions of the exemption [§ 381.310(c)(3)]; and
- Failing to explain how an equivalent level of safety would be achieved [§ 381.310(c)(5)].

III. Request for Reconsideration of Agency Decision

SBTC requested FMCSA to reconsider its denial of the ELD exemption. According to SBTC, the reason for not providing an estimate of the number of drivers and CMVs that would be operating under the exemption is that SBTC is a trade group, not a single carrier. SBTC argues that a trade group would not know the number of employees eligible for the exemption. Regarding that question, SBTC deferred to the Agency because FMCSA is the custodian of MCS-150 industry data. SBTC believes that

it has identified the percentage of carriers that would be affected by the exemption but does not know a way to extrapolate the number of drivers from the estimated 3.5 million truck drivers in the U.S. without deferring to FMCSA for that information.

IV. Equivalent Level of Safety

To ensure an equivalent level of safety, SBTC suggests a return to paper logs. According to SBTC, “Paper logs were deemed sufficient to ensure adequate levels of safety for generations, more than 80 years. And the FMCSA has already issued numerous exemptions that require carriers to revert to tracking their hours of service using paper logs in lieu of ELDs...” SBTC argues that ELDs have caused reckless speeding and pose a national security threat. SBTC urges FMCSA to look carefully at the unintended consequences of the ELD rule when deciding whether or not to grant the exemption. SBTC also suggests that FMCSA temporarily grant the exemption “if for no other reason than to press the pause button while [FMCSA] studies these unintended consequences and their adverse effects on safety. We contend this would indeed achieve a greater level of overall safety than the current status quo.”

V. Public Comments

On October 29, 2019, FMCSA published SBTC’s petition for reconsideration and requested public comment (84 FR 57932). The Agency received approximately 355 comments, more than 300 of which favored the exemption. For example, Mr. Michael Garrison said, “I support the ELD exemption application. Please grant the exemption. The 14-hour rule is forcing drivers to drive when they are tired and is a major safety concern.” Mr. Dahl Warren wrote, “I support the ELD exemption especially for small

carriers. There is no need for these carriers to have the expense burden that the ELDs create.”

Only a few commenters opposed the exemption: the Commercial Vehicle Safety Alliance (CVSA), Truckload Carriers Association (TCA) and Mr. Michael Millard. CVSA wrote, “In their request for reconsideration, SBTC reiterates the same claims about paper logs and does not provide any additional method of ensuring an equivalent level of safety.” TCA stated, “In comments submitted to the Agency in July 2018, TCA opposed the Small Business in Transportation Coalition’s (SBTC) initial request for an exemption from the ELD requirements and we now oppose the group’s petition for reconsideration.” Mr. Millard said, “The FMCSA should again deny the SBTC's request to assure a level platform among all carriers large and small in following the HOS. Removing the ELD from the HOS equation allows those using paper RODS an upper hand and questionable HOS compliance.”

VI. FMCSA Decision

The FMCSA carefully reviewed SBTC's petition for reconsideration, as well as the public comments. The Agency has concluded that SBTC provided no additional information that would alter its decision to deny SBTC's 2018 exemption application. For example, instead of providing the information required by subpart C of 49 CFR part 381 for reconsideration, SBTC presented arguments for *not* providing the information. SBTC's application still does not provide the number of drivers and CMVs that would be covered by the exemption, nor does SBTC explain how an equivalent level of safety would be achieved by continuing to use paper logs. Therefore, the Agency denies this application for exemption from the ELD rule and reaffirms its previous denial.

Larry W. Minor,
Associate Administrator for Policy.

[FR Doc. 2020-07730 Filed: 4/10/2020 8:45 am; Publication Date: 4/13/2020]